IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 993 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHAGWANBHAI M PATEL - Petitioner(s)

Versus

GENERAL MANAGER (OPERATION) RESUME & 1 - Respondent(s)

========== **Appearance :**

MR BR PARIKH for Petitioner(s) : 1,
MR PRANAV G DESAI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/01/2007

ORAL JUDGMENT

By way of this petition under Article 226 of the Constitution of India, the petitioner who was at the relevant time serving as a Branch Manager of the State Bank of India has prayed for an appropriate writ, direction and/or order quashing and setting aside the inquiry report as well as the final order passed by the disciplinary authority dated 27-3-1993 by which on conclusion of the inquiry and having found all the charges proved against the petitioner, the petitioner came to be dismissed

from service.

2. The facts leading to the present Special Civil Application in nutshell are that at the relevant time, petitioner was serving as a Branch Manager of State Bank of India at Mathak branch, Tal: Dhrangadhra, Dist: Surendranagar. A departmental inquiry was initiated against the petitioner and the inquiry officer was appointed and the petitioner was charge sheeted and the articles of charges are “(i) Misuse of official position for personal gain or benefit to third parties (ii) Perpetration of frauds on the borrowers' account/bank and (iii) Gross negligence in discharge of Bank's duties.” After giving fullest opportunity to the petitioner, the inquiry officer submitted its report dated 9-12-1992 holding all the charges proved against the petitioner. The petitioner was served with the inquiry report and was also served with the show cause notice why penalty/punishment should not be imposed on the basis of the charges proved against him. By communication dated 16-11-1992, the petitioner represented and submitted that as the preliminary investigation report was not served upon the petitioner, prejudice has been caused to the petitioner and non supply of the said report is a serious breach of the principles of natural justice. The petitioner also represented that looking to his 40 years career and the only earning member of the family, he requested to take a lenient view in the matter. By order dated 27-3-1993, the disciplinary authority imposed penalty of dismissal and further passed an order to treat the period of suspension as such meaning thereby that he shall not be entitled to payment of any further amounts by way of salary of the said period, other than the subsistence allowance already

paid to him. Being aggrieved and dissatisfied with the order passed by the disciplinary authority imposing the penalty of dismissal, the petitioner preferred appeal before the appellate authority and the appellate authority by order dated 6-1-1994 rejected the said appeal confirming the order passed by the disciplinary authority. Being aggrieved and dissatisfied with the order of dismissal imposed by the disciplinary authority confirmed by the appellate authority, the petitioner has preferred the present Special Civil Application.

3. Shri BR Parikh, learned advocate appearing on behalf of the petitioner has assailed the impugned orders on the following three grounds (i) that the petitioner has not been supplied with the report of the preliminary inquiry and the same has caused prejudice to the petitioner and therefore, the inquiry report is in breach of principles of natural justice (ii) the petitioner has not been given opportunity to cross-examine th witness who were examined during the preliminary inquiry and (iii) petitioner was not given opportunity against the proposed penalty of dismissal.

4. Shri Parikh has submitted that before initiation of the departmental inquiry, there was a preliminary inquiry conducted and certain witnesses were examined and thereafter, the departmental inquiry was initiated and in spite of the fact that the petitioner prayed for to supply the copy of the report of the preliminary inquiry, the same has not been given to the petitioner and the same has caused prejudice to the petitioner. Under the circumstances, the inquiry report itself is vitiated and the same is in

breach of principles of natural justice. It is further submitted by him that certain officers were examined at the stage of preliminary inquiry and the petitioner has not been given opportunity to cross-examine those witnesses who were examined during the preliminary inquiry. It is further submitted that one of the witness who was examined during the preliminary inquiry himself was appointed as Presenting Officer. It is further submitted by him that the petitioner was served with the show cause notice against the penalty, however, the petitioner was not given opportunity against the proposed penalty of dismissal and therefore, also the impugned order of dismissal is vitiated and no opportunity has been given to the petitioner to make submission against the proposed penalty of dismissal and therefore, the same is in breach of principles of natural justice and therefore, it is requested to allow the present Special Civil Application. Shri Parikh has relied upon the decisions of the Division Bench of this Court in the case of **Karsan Arjan Ayer V. Rustom K. Patel and others** reported in 13 GLT 92 in support of his submission. That the copy of the preliminary report was required to be served and non supply of the same will result into breach of principles of natural justice.

5. On the other hand, the petition is opposed by Shri Pranav G. Desai, learned advocate appearing on behalf of the respondent Bank. An affidavit-in-reply is filed on behalf of the respondent Bank. It is submitted that the preliminary report has not been relied upon by the inquiry officer at all and the preliminary investigation/inquiry was initiated only with a view to ascertain whether there is further case for departmental inquiry or not and when fullest opportunity has been given

to the delinquent during the departmental inquiry, non supply of the report of the preliminary inquiry would not result into breach of principles of natural justice and no prejudice has been caused to the petitioner by non supplying the same as the same has not been relied upon by the inquiry officer. He has relied upon the decision of the Hon'ble Supreme Court in the case of **Narayan Dattatraya Ramteerthakhar V. State of Maharashtra and others** reported in 1997 (1) SCC 299.

6. Shri Desai has also further submitted that so far the contention on behalf of the petitioner that no opportunity was given to him to cross examine the witnesses who were examined during the preliminary inquiry is concerned, first of all the petitioner has not given the names of those persons who were cross examined during the preliminary inquiry and secondly he has not shown any prejudice that by not permitting him to cross examine the aforesaid witnesses, how he was prejudiced. He has also further submitted that all those witnesses who were examined during the departmental inquiry, the petitioner was permitted to cross examine all those witnesses and when fullest opportunity has been given to the petitioner during the departmental inquiry, there is no prejudice caused to the petitioner and therefore, the inquiry report and the consequent order passed by the disciplinary authority is not vitiated.

7. Shri Desai has also further submitted that the petitioner was given fullest opportunity and was served with the show cause notice calling upon the petitioner to show cause why penalty should not be imposed

and the petitioner did submit his representation dated 16-11-1992 against the proposed penalty and he also requested to take a lenient view looking to 40 years service career and therefore, it cannot be aid that the opportunity has not been given to the petitioner against the proposed penalty. He has relied upon the decision of the Hon'ble Supreme Court in the case of **State Bank of Patiala and others V. S.K. Sharma** reported in AIR 1996 SC 1669 dealing with the test of prejudice. Shri Desai has further submitted that looking to the charges proved against the petitioner and even the petitioner has admitted having misappropriated the amount of loan to be paid to other persons, the only order which was warranted, was the dismissal and therefore, it is submitted that no illeniency has been committed by the disciplinary authority in imposing the penalty of dismissal and therefore, it is requested to dismiss the present Special Civil Application.

8. Heard the learned advocates appearing on behalf of the parties.

9. Petitioner was serving as a Branch Manager of State Bank of India, departmental inquiry was initiated against him and the petitioner was charge sheeted and the charges levelled against him which are subsequently proved, were misuse of official position for personal gain or benefit to third parties, perpetration of frauds on the borrowers' account/bank and gross negligence in discharge of Bank's duties. Before even initiating the departmental inquiry, a preliminary inquiry was conducted to satisfy and to take a decision whether the allegations against the petitioner are worth further inquiry and/or for which a regular

departmental inquiry is required to be initiated or not and after having satisfied that there is a prima facie case against the petitioner, the full fledged inquiry came to be initiated against the petitioner, inquiry officer was appointed and the petitioner was given the fullest opportunity. It is the case on behalf of the petitioner that though demanded, the petitioner was not served with the report of the preliminary inquiry and therefore, the inquiry report and the subsequent proceeding are vitiated. As held by the Hon'ble Supreme Court in the case Narayan Dattatraya Ramteerthakhar (supra), the preliminary inquiry has nothing to do with the inquiry conducted after the issue of the charge sheet. The former action would be to find whether disciplinary enquiry should be initiated against the delinquent. After full fledged inquiry was held, the preliminary inquiry had lost its importance. Under the circumstance, non supply of the report of the preliminary inquiry will not vitiate the inquiry report which was after full fledged disciplinary inquiry. Under the circumstance, the contention on behalf of the petitioner that because of non supply of the report of the preliminary inquiry, the inquiry report is vitiated and the same is against the principles of natural justice cannot be accepted.

10. It is the contention on behalf of the petitioner that the petitioner has not been given opportunity to cross examine the witnesses who were examined during the preliminary inquiry. It is required to be noted that as stated above, the preliminary inquiry was only for the purpose of find out the truth and to have a prima facie satisfaction whether the allegations against the petitioner are worth, further, subject to disciplinary

proceeding or not and therefore, if some witnesses were examined during the preliminary inquiry, who were not examined during the full fledged inquiry, it cannot be said that the same is vitiated and is in breach of principles of natural justice. As such the petitioner has not pointed out and/or given the particulars of those witnesses who were examined during the preliminary inquiry. The petitioner is not able to point out what prejudice has been caused to him by not permitting him to cross examine those witnesses who were examined during the preliminary inquiry. The petitioner was given ample opportunity to cross examine all the witnesses who were examined during the full fledged disciplinary inquiry. No grievance has been made by the petitioner that the petitioner has not been given the opportunity to cross examine all those witnesses who were examined during the full fledged disciplinary inquiry.

11. Now so far the contention on behalf of the petitioner that the petitioner was not given opportunity against the proposed penalty of dismissal is concerned, it is required to be noted that the petitioner did make a detailed representation dated 16-11-1992 after the petitioner was served with the inquiry report as well as the petitioner was served with the show cause notice why penalty should not be imposed upon the petitioner and the petitioner also represented to take a liniment view considering his 40 years of service and he also represented that he was the only earning member of the family. Therefore, it cannot be said that no opportunity has been given to the petitioner. After considering the representation with regard to the penalty, the impugned order has been passed imposing the penalty of dismissal considering the seriousness of

the charges proved against the delinquent,-petitioner. Therefore, it cannot be said that merely because in the show cause notice, the petitioner was not called upon to show cause against the proposed penalty of dismissal, any prejudice has been caused to the petitioner. As stated above, the petitioner did make representation and the same has been considered. As observed by the Hon'ble Supreme Court in the case of State Bank of Patiala and others (supra), procedural provisions are generally meant for affording a reasonable and adequate opportunity to the delinquent officer/employee. They are generally speaking, conceived in his interest. Violation of any and every procedural provision cannot be said to automatically vitiate the enquiry held or order passed. If no prejudice is established to have resulted therefrom, no interference is called for. Applying the ratio of the said decision to the facts of the present case, it cannot be said that any prejudice has been caused to the petitioner. On the contrary, as stated above, the petitioner did make representation against the penalty and requested to take a lenient view which came to be considered by the disciplinary authority while imposing the penalty and therefore, the contention on behalf of the petitioner cannot be accepted.

12. So far as the decision of this Court relied upon by the learned advocate appearing on behalf of the petitioner is concerned, the same is not applicable to the facts of the present case. In the case before this Court, the entire preliminary inquiry report with all its conclusion has adopted for coming to the conclusion as to the guilt of the delinquent and considering the facts of that case, the Division Bench held that material at the back of the petitioner had not only been relied upon but was used

against him and therefore, non supply of the preliminary inquiry report has vitiated the entire proceeding as the same is in breach of principles of natural justice. In the present case, it is not the case of the petitioner that the entire preliminary inquiry report with all its conclusion had been adopted for coming to the conclusion as to the guilt of the delinquent. In the present case, independent full fledged disciplinary inquiry has been initiated against the petitioner delinquent and fullest opportunity has been given to the petitioner and considering the evidence on record after full fledged disciplinary inquiry, the inquiry officer has submitted its report.

13. Even, otherwise, it is required to be noted that the delinquent himself has admitted that he has misappropriated the amount of loan which was to be paid to the beneficiary/customer of the Bank vide admission in the written statement. Petitioner was at the relevant time serving as a Branch Manager of the Bank, he was holding the post of trust. He has misappropriated the amount which was required to be paid to other customers/borrowers of the bank which was required to be paid to them by way of loan. The charges proved against the petitioner Branch Manager are misuse of official position for personal gain or benefit to third parties, perpetration of frauds on the borrowers' account/bank and gross negligence in discharge of Bank's duties and all the three charges levelled against the petitioner are proved beyond doubt and even it has been admitted by the petitioner also. Under the circumstances, the only penalty which can be imposed is to dismiss him from service and therefore, it cannot be said that there is any illegality committed by the respondents in imposing the penalty of dismissal. This Court is not

sitting as an appellate authority against the decision of the disciplinary authority which is in accordance with law and on merits also, the same is justified.

14. For the reasons stated above, the petition fails and is dismissed accordingly. Rule discharged. No costs.

(M.R.SHAH,J.)

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